

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ANTONIO DON MILTON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. CIV-10-1367-F
	)	
DAVID MILLER,	)	
	)	
Respondent.	)	

**ORDER**

This action seeks habeas relief under 28 U.S.C. § 2254. Petitioner is a state prisoner appearing *pro se* and his pleadings are liberally construed.

Magistrate Judge Bana Roberts entered her Report and Recommendation in this matter on February 10, 2012, recommending that the petition be denied. Doc. no. 21. Petitioner filed an objection to the magistrate judge's recommended findings and conclusions. Doc. no. 30. The court reviews all objected to matters *de novo*.

Upon review, and having considered defendant's objections,<sup>1</sup> the court substantially concurs with the magistrate judge's determinations and concludes that it would not be useful to cite any additional arguments or authorities here.

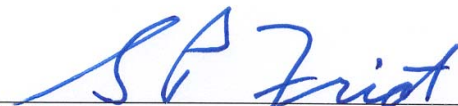
Accordingly, the Report and Recommendation of Magistrate Judge Roberts is **ACCEPTED, ADOPTED** and **AFFIRMED** in its entirety. The petition for a writ of habeas corpus is **DENIED**.

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<sup>1</sup>Arguments raised for the first time in defendant's objections have been waived. *See, United States v. Garfinkle*, 261 F.3d 1030, 1031 (10<sup>th</sup> Cir. 2001) (in this circuit, theories raised for the first time in objections to the magistrate judge's report are deemed waived).

Petitioner is entitled to a certificate of appealability only upon making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This standard is satisfied by demonstrating that the issues movant seeks to raise are deserving of further proceedings, debatable among jurists of reasons, or subject to different resolution on appeal. *See, Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[W]e give the language found in §2253(c) the meaning ascribed it in [*Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits,...[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* When a prisoner’s habeas petition is dismissed on procedural grounds without reaching the merits of the prisoner’s claims, “a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Petitioner has not made the requisite showing; a certificate of appealability is **DENIED**.

Dated this 11<sup>th</sup> day of July, 2012.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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